IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6337 OF 2006

Panther Fincap & Management
Services Ltd. and ors. ..Petitioners

Vs.

Bank of India and anr. ..Respondents

WITH
WRIT PETITION NO. 6338 OF 2006

Panther Investrade Ltd. and Ors. ..Petitioners

Vs.

Bank of India & anr. ..Respondents

WITH
WRIT PETITION NO. 6339 OF 2006

Classic Credits Ltd. and ors. ..Petitioners

Vs.

Bank of India and anr. ..Respondents

Mr. S.G. Aney, Senior Advocate with Mr. Sanjay Jain with Mr. Nishit M. Dhruva with Mr. Prakash Shinde i/by M/s. M. Dhruva & Co. for petitioners in all the matters.

Mr. N.G. Thakkar, Senior Advocate with Mr. Satish Shetye with Mr. M.S. Bodhanwalla and Smt. Swati Deshpande i/by M/s. M.S. Bodhanwalla & Co. for respondents.

CORAM: B.H. MARLAPALLE & J. H. BHATIA,JJ.

Date of Reserve : November 22, 2006.

Date of Pronouncement: November 24, 2006.

P.C.:

1. These three petitions arise from a common order dated 9/8/2006 passed by the learned Chairperson of the Debts Recovery Appellate Tribunal at Mumbai deciding Misc. Application Nos.609, 608 and 610 of 2005 filed in Appeal Nos.332, 338 and 339 of 2005 respectively. By the said order the applications of the respective petitioners for waiver filed under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short the RDB Act) in the said three appeals came to be disposed off by directing to deposit an amount of Rs.5 crores, Rs.10 crores and Rs.10 crores respectively with the Registry of the Appellate Tribunal within a period of eight weeks.

2. The petitioners are the companies registered under the Companies Act, 1956, having their registered offices at Mumbai and they are formed by Mr.Ketan Parekh and his brothers. The respondent-bank had approached Debts Recovery Tribunal at Mumbai by filing

Original Application No.370, 368 and 369 of 2001 respectively claiming a total recovery of Rupees One Hundred Sixty Nine crores plus interest on the ground that the Pay Orders of the said amount issued by the Madhavpura Mercantile Co-Operative Bank Ltd., Mumbai Branch and against which the petitioners-companies were given credits were dishonoured repeatedly and on 13/3/2001 the RBI issued a Circular requesting all Clearing Houses and participating members not to deposit the instruments issued by the said Madhavpura Mercantile Co-Op. Bank Ltd. The applications filed by the respondent-Bank came to be decreed by the Recovery Tribunal as under:-

(a) O.A. No.370/01	Rs.46,96,79,169.59 with future interest @ 12% P.A.
(b) O.A. No.368/01	Rs.15,50,11,409.80 with future interest @ 12% P.A.
(c) O.A. No.369/01	Rs.61,16,85,355.80 with future interest @ 12% P.A.

. The said decrees came to be challenged in the above referred appeals and the petitioners-companies failed in persuading the Tribunal to waive the condition of deposit for entertaining the said appeals. We have also noted that all the three appeals have been subsequently dismissed on account of failure to deposit the directed amount.

3. In Appeal No.332 of 2005 the appellant nos.2 and 3 are Mr.Kirtikumar N. Parekh and Mr. Kartik Kumar Parekh, both are brothers of Mr.Ketan Parekh. In Appeal No.338 of 2005 the appellant nos.2 to 4 are Mr.Ketan V. Parekh, Mr. Kartik Kumar Parekh and Mr. Kirtikumar Parekh, whereas in Appeal No.339 of 2005 the appellant nos. 2 to 4 are Mr. Navinchandra N. Parekh, Mr. Ketan V. Parekh and Mr. Kirtikumar N. Parekh. All these brothers are the Directors and also the guarantors and, therefore, the applications of the Bank in all the three cases were decreed against the appellants-companies as well as the Directors who stood guarantors.

4. It was submitted before the Tribunal, firstly,

that there was an application for an order of attachment in the sum of Rupees One Hundred Sixty Nine crores passed by the Appellate Tribunal on 25/11/2005 against Madhavpura Mercantile Co-Op. Bank Ltd. and the said order covered the decreetal amount in the three appeals. Consequently, there was no need to pass order of pre-deposit and the said condition was required to be waived. Secondly, there is a prohibitory order dated 12/12/2003 passed by the Securities and Exchange Board of India (SEBI) whereby the appellants-companies along with other companies came to be prohibited from buying, selling or transferring, pledging or disposing off or dealing in any other manner the shares of the Global Trust Bank till the investigations are completed. In addition, there is also a prohibitory order against the appellants Mr. Ketan Parekh and Mr. Kartik Parekh from buying, selling or dealing in securities in any manner directly or indirectly and they are also debarred from associating with the securities market for a period of 14 years. On these counts the petitioners-companies and their Directors/guarantors are unable to carry on the business and none of them

are in a position to make any pre-deposit. Thirdly, it was submitted that the directors who are guarantors are earning meagre income by way of salary which, as per the income tax returns placed on record, were within the range of Rs.90,000/- to Rs.4,00,000/- p.a. Lastly, it was argued that Mr. Ketan Parekh is a notified person under the provisions of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 and, therefore, his properties could not be attached, by placing reliance on the decision of this Court (DB) in the case of Ketan Parekh vs. Oriental Bank of Commerce and ors. (W.P. No.6162 of 2005 decided on 17/1/2006).

5. The bank while opposing the prayer for waiver submitted that Mr. Ketan Parekh could arrange to pay an amount of Rupees Two Hundred Thirty crores and has agreed to deposit further sum of Rupees One Hundred Thirty Nine crores as per the directions of the Supreme Court of India. There was no reason as to why the appellants, who are associated with other companies could not arrange to make deposit of the entire decreetal amount. The bank further pointed out

that balance-sheets of the other associated companies where Mr. Kartik Kumar and Mr. Kirti Kumar are drawing salaries were not placed on record to show the financial conditions of those companies. In addition, no prohibitory orders have been issued by the SEBI against these associated companies.

6. On the first point the Tribunal held that the application filed for attachment of Rupees One Hundred Sixty Nine crores admittedly would cover the claim of the respondent-bank in all these appeals but the said amount was not available for attachment because the Madhavpura Mercantile Co-Op. Bank Ltd. had stated on affidavit in the Supreme Court that the amount of Rs.169 crores which came in its hands had already been disbursed to the small depositors who had deposited their moneys with the said Bank. This was clear from the affidavit filed before the Supreme Court and it was also clear from the order passed by the Supreme Court on 2/8/2006. The Tribunal further went on to record that the appellants' plea that the appellants-directors were unable to make any pre-deposit under Section 21 of the RDB Act could not

be accepted.

7. It is true that from the application for attachment before judgment an appeal came to be filed before the Appellate Tribunal and we are informed that the said appeal came to be disposed off recently. The amount deposited with the said Bank by Mr. Ketan Parekh, consequent to the orders of the Supreme Court, is not available partly or fully to satisfy the decree passed against the Madhavpura Mercantile Co-op. Bank Ltd. and, therefore, as at present, it cannot be accepted that the petitioners' appeals were required to be entertained by waiving of the pre-deposit condition.

8. It is also clear from the record that as and when directed by the competent courts, including the Supreme Court of India, Mr. Ketan Parekh has been depositing the amounts, even as at present, and an amount of Rs.238 crores has been deposited from 13/1/2005 to 27/1/2006 as is clear from Exhibit "C" to the affidavit in reply filed by the respondent-Bank. The following schedule of payment was submitted by

Mr.Ketan Parekh before the Supreme Court, as noted in its order dated 2/8/2006:-

(a)	01/11/2006	Rs.22.5 crores
(b)	01/02/2007	Rs.22.5 crores
(c)	01/05/2007	Rs.22.5 crores
(d)	01/08/2007	Rs.22.5 crores
(e)	01/11/2007	Rs.22.5 crores
(f)	01/02/2008	Rs.26.43 crores

. By a subsequent order dated 9/11/2006 the instalment of Rs.22.5 crores falling due on 1/11/2006 has been allowed to be deposited in two equal instalments falling on 30/12/2006 and 31/1/2007 by the Supreme Court. Some of the associated companies of the petitioners are not under the SEBI as at present. The Tribunal, therefore, right in its conclusion that the petitioners'contentions that they are unable to fulfil a pre-deposit condition could not be accepted. As noted earlier, in all the three appeals the entire amount directed to be deposited is Rupees Twenty Five crores. In the first case the deposit amount is about 30% of the decreetal amount, whereas in the remaining

two appeals the deposit amount is less than 25% of the decreetal amount. The Tribunal has considered the hardships as put up by the petitioners and has rightly rejected the prayer for waiver and while doing so it has not passed a unreasonable or harsh order fixing the pre-deposit amount.

9. We must also note that Mr. Ketan Parekh from time and again in his letters addressed to the respondent-bank unequivocally has admitted the bank's liability. In his letter dated 29/3/2001 addressed to the Chairman and Managing Director of the respondent-Bank he admitted to have undertaken transactions of the Pay Orders on two occasions with the following particulars:-

Date	Amount (Rs. in Crores)	Pay Order drawn on	Date on which discounted
08.03.2001	20.00	Panther Fincap & Management Services Limited.	08.03.2001
08.03.2001	10.00	Panther Investrade Limited.	08.03.2001

08.03.2001	32.00	Classic Credit Ltd.	08.03.2001
09.03.2001	33.00	Classic Credit Ltd.	09.03.2001
09.03.2001	32.00	Panther Fincap & Management Services Limited.	09.03.2001
09.03.2001	10.00	Panther Investrade Limited.	09.03.2001
TOTAL	137.00		

. In the said letter he also stated,

"that I and all my family members have no intention to cause any loss to your bank. Towards this we would strive to take every step possible to indemnify your bank.....

That we are shortly likely to come into possession of some financial assets for which we are taking every step possible. We are expecting to receive some shares of AB Corp Limited, which we propose to offer you as security. This would take care of your requirement for securitisation.

> That every effort is being made by me to raise resources in cash or in form of financial assets so that the same can be placed at the disposal of your bank."

. In his letter dated 17/6/2004 addressed to the Chairman of the Madhavpura Mercantile Co-op. Bank, Ahmedabad, he mentioned an amount of Rupees One Hundred Thirty Seven crores to be paid to the respondent-bank and the same was repeated in his letter dated 25/8/2004 again addressed to the very same Chairman.

10. The discretion as available under Section 21 either for waiver or for reduced deposit as a pre-condition is required to be considered on the prima facie view on the merit of the appeal and not only on the basis of the hardships of the appellants. On the face of the admitted liability by Mr.Ketan Parekh, who is the main functionery of the appellants-companies, has admitted the payment of

Rupees One Hundred Thirty Seven crores due to the Bank on more than one occasions.

11. After hearing the learned Senior Counsel for the respective parties at length and gone through the reasoning set out by the learned Chairperson of the Appellate Tribunal, we are of the considered view that the impugned common order does not suffer from any errors apparent on the face of the record and the reasoning set out therein cannot be termed as grossly erroneous so as to call for interference at our hands. The view taken by the Appellate Tribunal that the petitioners have the alternative sources to make good the condition of deposit amount as directed, cannot be said to be unfounded. The petitions must, therefore, fail at the threshold.

12. Resultantly, the petitions are rejected summarily. However, the petitioners' appeals which have been dismissed by order dated 5/10/2006 shall stand restored to the file of the Appellate Tribunal if the amounts directed by the Tribunal are deposited with its Registry within a period of four weeks from

today by the respective petitioners and consequently the said order dated 5/10/2006 would stand set aside.

(J.H. Bhatia, J.) **(B.H. Marlapalle,J.)**